No. 229

Office - Supreme Court, U. S.
FILED
JUL 13 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1955

HELENE M. BEAUMONT,

Petitioner-Plaintiff,

v.

PENNSYLVANIA RAILROAD COMPANY, FLORIDA EAST COAST RAILWAY COMPANY and FLOYD M. LOFTIN and JOHN W. MARTIN, as Trustees of the FLORIDA EAST COAST RAILWAY COMPANY,

Respondents-Defendants.

PETITION FOR WRIT OF CERTIORARI

MORRIE SLIFKIN,
Lyceum Building,
39 North Broadway,
Tarrytown, N. Y.
Attorney for Petitioner

REIN, MOUND & COTTON,
PAUL D. COMPTON,
ROBERT T. DAWSON,
of Counsel.

APPELLATE PRESS CORP., 114 WORTH STREET, N. Y., CORTLANDT 7-7627

INDEX

	PAGE
Reports of Opinions Below	1
Jurisdiction of This Court	2
Questions Presented for Review	3
Statutes Involved	3
Statement of the Case	3
Federal Questions Raised	6
Reasons for Granting Writ	7

Appendix

A—Statutes	13
B—Opinions	33
C—Record References Showing Federal Questions Raised	48
D—Orders and Judgments Below	55

Cases Cited

Adams Express v. Croninger, 226 U. S. 491	9, 11
Ancient Egyptian Order v. Michaux, 279 U. S. 737	7
Araje v. Pennsylvania R. Co., 251 N. Y. 354	9
Boston & Maine R. R. v. Hooker, 233 U. S. 97	9, 11
Boston & Maine R. R. v. Piper, 246 U. S. 439	8, 10
Buthe v. Denis, 133 U. S. 514	7
Chicago &c. R. R. v. McCaul-Dinsmore Co., 253 U. S. 97	8, 10, 11
China Fire Insurance Co. v. Davis, 50 Fed. 2nd 389, cert. den. Mellon v. China Fire Insurance Co., 284 U. S. 658	10
Cincinnati, New Orleans & Texas Pacific R. R. v. Rankin, 241 U. S. 327	8

PAGE

Dyer v. Sims, Cert. Granted 340 U. S. 809, Reversed & Remanded 341 U. S. 22 7

Franklin v. Southern Pacific Co., 203 Cal. 680, cert. den. 278 U. S. 621 10

Galveston Ry. v. Wallace, 223 U. S. 491 9
Galveston &c. Ry. Co. v. Woodbury, 254 U. S. 357 .. 8

Hartzberg v. N. Y. Central R. R., 181 Misc. 129, affirmed 268 App. Div. 904, affirmed 295 N. Y. 103, cert. den. 328 U. S. 849 9

Kilthau v. Inter-Mercantile Marine Co., 245 N. Y. 361 8

Lowden v. Simonds, etc. Grain Co., 306 U. S. 516 .. 10n

New York, New Haven & Hartford R. R. v. Nothnagle, 346 U. S. 128 ..... 8, 9
Northern Railway v. Merchants Elev. Co., 259 U. S. 285 ..... 10n

Penna. R. R. Co. v. International Coal Co., 230 U. S. 184 ..... 10n

Union Pacific R. R. v. Burke, 255 U. S. 315 ..... 8, 10
United States v. Pink, 315 U. S. 203 7

Statutes

Title 28, U. S. Code, § 1257 2
Title 49, U. S. Code, § 20[11] 3, 6, 7, 8, 9, 10
Title 49, U. S. Code, § 1[6] 3, 7, 10
Title 49, U. S. Code, § 6 .....3, 7, 10
Title 49, U. S. Code, § 15 ..... 3, 7

34 U. S. Stat. 595 [Carmack Amendment of 1906].. 11
38 U. S. Stat. 1196 [First Cummins Amendment of 1915] 11
39 U. S. Stat. 441 [Second Cummins Amendment of 1916] 11

IN THE

Supreme Court of the United States

October Term, 1955

HELENE M. BEAUMONT,

Petitioner-Plaintiff,

v.

PENNSYLVANIA RAILROAD COMPANY, FLORIDA EAST COAST RAILWAY COMPANY and FLOYD M. LOFTIN and JOHN W. MARTIN, as Trustees of the FLORIDA EAST COAST RAILWAY COMPANY,

Respondents-Defendants.

PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Helene M. Beaumont, plaintiff in the State Court, respectfully prays for a Writ of Certiorari to review the final order and judgment of the Court of Appeals of the State of New York, and that said Writ of Certiorari issue to said Court of Appeals and to the Supreme Court of the State of New York, County of New York, which possesses the record herein.

Reports of Opinions Below

The opinion of the Trial Court (Supreme Court of the State of New York, County of New York), is reported in 127 N. Y. S. 2nd 216 (not officially reported).

The opinion of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, is reported in 284 App. Div. 354, 131 N. Y. S. 2nd 652.

The Court of Appeals of the State of New York affirmed the Judgment of the Appellate Division without opinion (308 N. Y. 920).

Jurisdiction of This Court

The final order and judgment of the Court of Appeals of the State of New York which affirmed the order and judgment of modification of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, was dated and entered in the Office of the Clerk of the Court of Appeals on April 21, 1955. The order making the order and judgment of the Court of Appeals the order and judgment of the Supreme Court of the State of New York, County of New York, was dated and entered in the office of the Clerk of the Supreme Court of the State of New York, County of New York, on May 9, 1955. The judgment entered on the Remittitur of the Court of Appeals to the Supreme Court of the State of New York, County of New York, affirming the judgment of modification of the Appellate Division of the Supreme Court, First Judicial Department, is dated June 10, 1955, and was entered in the Office of the Clerk of the Supreme Court of the State of New York, County of New York, on June 10, 1955. No request for a re-hearing or for a re-argument was made to the Court of Appeals. The Court of Appeals of the State of New York is the highest court of that state in which a decision could be made.

Jurisdiction is conferred upon this Court by Section 1257 of the U. S. Code, Title 28. This provides that final judgments or decrees rendered by the highest court of a state in which a decision could be made may be reviewed

by this Court by Writ of Certiorari where any title, right, privilege or immunity is specifically set up or claimed under the Statutes of the United States. The petitioner claims rights under the Interstate Commerce Act, Sections 1 *et seq.* of the U. S. Code, Title 49.

Questions Presented for Review

Are the provisions of respondents' tariffs which limit their liability for the loss of an interstate passenger's baggage to a value declared by the passenger and which prohibit declarations of value in excess of $2500, valid and enforcible where such baggage exceeds $2500 in value, or are such provisions in violation of Title 49, U. S. Code, Section 20 (11)?

Are the provisions of respondents' tariffs exempting them from all liability for the loss of an interstate passenger's jewelry transported as baggage where there was no fraud on the part of the passenger, valid and enforcible, or are such provisions in violation of Title 49, U. S. Code, Section 20 (11)?

Statutes Involved

The statutes involved are those contained in Title 49 U. S. Code, Sections 1 *et seq.* and more particularly Title 49 U. S. Code, Section 20, subd. 11, Section 1, subd. 6, Section 6 and Section 15. They are set forth in the appendix. Volume and page of Official Addition appears in appendix.

Statement of the Case

Plaintiff sued defendants, common carriers for hire, to recover for the loss of two trunks and their contents,

consisting of jewelry, furs, used clothing, and other personal property belonging to her, which were delivered to defendant Florida East Coast Railway Company, as the initial common carrier, and which came into the custody of the defendant, Pennsylvania Railroad Company, as the delivering common carrier, which property was never redelivered by the defendants to the plaintiff.

In lieu of the presentation of testimony before the Trial Court, defendants conceded certain facts and the plaintiff conceded certain facts.

Defendants conceded that they were common carriers for hire in interstate commerce; that on May 19, 1945, plaintiff checked nine trunks through her agent at West Palm Beach, Florida, with defendant Florida East Coast Railway (R. fol. 120); that plaintiff held first class transportation from West Palm Beach to New York City, and that first class transportation was the highest grade of transportation that plaintiff could purchase as a passenger (R. fols. 121, 122); that plaintiff or her agent who checked the nine trunks as baggage was guilty of no actual fraud in checking the contents as baggage (R. fol. 125); that said nine trunks arrived in New York City on May 21, 1945, defendant Pennsylvania acting as the final carrier (R. fol. 122); that plaintiff was not notified of their arrival in New York City on May 21, 1945 (R. fol. 125); that demand was made for the delivery of the said nine trunks on defendant Pennsylvania on May 25, 1945; that two of the trunks containing the plaintiff's property were not delivered to plaintiff and have never been delivered to her; that defendants could not account for their loss (R. fols. 122, 123); and that the two trunks contained the following property belonging to the plaintiff of the following agreed value (R. fols. 123, 124):

Plaintiff's jewelry		$39,152.50
Plaintiff's three fur jackets and two fur capes (said property consisting of		8,150.00
1 Himalayan Martin jacket	$2,100.00	
1 Platina Fox jacket	2,150.00	
1 Lynx jacket	600.00	
1 Ermine cape	2,000.00	
1 Fox cape	1,300.00)	
Plaintiff's used clothing		7,697.32
Other articles of personal property of plaintiff		489.68
Plaintiff's two trunks containing the aforesaid property		350.00
		$55,839.50

Defendants also conceded that claim was timely made and that suit was timely instituted (R. fol. 126).

Plaintiff conceded that at the time her property was delivered to Florida East Coast, her agent signed a valuation slip (Defts' Ex. A., R. fols. 142-144) in the sum of $400 (R. fols. 126, 127). Plaintiff also conceded that the tariff (Defts' Ex. B.) was filed by defendants with the Interstate Commerce Commission (R. fol. 129), that no excess valuation charges were paid (R. fol. 128), but that plaintiff paid excess weight charges to defendants (R. fol. 128).

Each of the defendants pleaded as a first affirmative defense that under the provisions of their tariffs they were wholly exempted from liability for the loss of plaintiff's jewelry. Each of the defendants also pleaded as a third partial defense that by virtue of the provisions of their tariffs their liability was limited to $400 declared by plaintiff's agent.

Federal Questions Raised

The defense of exemption from liability for the loss of plaintiff's jewelry as set forth in defendants' baggage tariffs filed with the Interstate Commerce Commission under the Interstate Commerce Act was pleaded by defendants in their answers (R. pp. 18-20, R. pp. 25-28). The defense of limitation of liability as set forth in defendants' baggage tariffs filed with the Interstate Commerce Commission under the Interstate Commerce Act was pleaded by the defendants in their answers (R. pp. 21-22, R. pp. 29-30). Plaintiff contended that since a ceiling of $2,500 was provided in the tariffs beyond which the passenger could not declare a value, *i. e.*, obtain full coverage for her property, the tariffs were illegal under the Interstate Commerce Act (R. p. 46, fols. 136, 137). Plaintiff at the trial moved to strike out the defenses as insufficient in law, as illegal and as attempting to set up defenses which are void under the Interstate Commerce Act (R. p. 47, fol. 139). The Trial Court held the defenses to be illegal under the Interstate Commerce Act and struck them out (R. p. 34, fols. 101, 102 and 106) (Opinion of Trial Court appears in Appendix).

The defendants relied upon the same defenses in the Appellate Division and the plaintiff urged their illegality under the Interstate Commerce Act. The Appellate Division sustained the defenses of exemption from liability for the loss of the jewelry and limitation of $400 for the other property, even though no opportunity to declare full value was given to the passenger in view of the ceiling of $2,500 beyond which a value could not be declared. The Appellate Division held that such exemption and such ceiling did not contravene Title 49, U. S. Code, Section 20, subd. 11 (R. p. 69, fol. 207); that the exemption and the ceiling were in accord with Section 20, subd. 11 (R. p. 70, fol. 209); that the adoption of a rule in the tariffs providing for ex-

emptions from liability and the adoption of a rule in the tariffs providing that a passenger need not have the opportunity to declare full value were authorized by Title 49, U. S. Code, Section 1(6) and Section 6 (R. p. 70, fol. 210); that such tariff rules were subject to challenge only before the Interstate Commerce Commission under Title 49, U. S. Code, Section 15 (R. p. 70, fol. 210); that a passenger need not have the opportunity to declare full value for baggage under Title 49, U. S. Code, Section 20, subd. 11, and that said section permits carriers to limit liability and permits carriers to exempt themselves from liability for jewelry transported in baggage (R. p. 72, fol. 216) (Opinion of Appellate Division appears in Appendix).

The same questions were urged in the Court of Appeals of New York as were raised in the Trial Court and in the Appellate Division and the Court of Appeals affirmed the judgment of modification of the Appellate Division by memorandum decision, dated Apr 21, 1955, without opinion (308 N. Y. 920). The portions of the record showing Federal questions raised appear in Appendix C.

Reasons for Granting Writ

1

The policy of this Court is to review and independently determine all questions in which a Federal right is necessarily involved on issues which affect a substantial part of the public.

United States v. *Pink,* 315 U. S. 203, 217;
Ancient Egyptian Order v. *Michaux,* 279 U. S. 737, 744;
Dyer v. *Sims,* certiorari granted, 340 U. S. 809, reversed and remanded, 341 U. S. 22;
Buthe v. *Denis,* 133 U. S. 514.

The issues herein are issues which involve every passenger using railroads on interstate journeys, and the questions raised affect a substantial part of the public.

2

The State Court erred in declaring valid the provisions of respondents' tariffs limiting their liability to the $400 declared by petitioner.

a. The tariffs do not permit a declaration of value in excess of $2500 and exempt respondents from liability for more than that amount. The provisions for limitation of liability are, therefore, invalid.

Union Pacific R. R. v. *Burke,* 255 U. S. 315;
Cincinnati, New Orleans & Texas Pacific R. R. v. *Rankin,* 241 U. S. 327;
Boston & Maine R. R. v. *Piper,* 246 U. S. 439;
New York, New Haven & Hartford R. R. v. *Nothnagle,* 346 U. S. 128;
Chicago, &c R. R. v. *McCaul-Dinsmore Co.,* 253 U. S. 97;
Kilthau v. *Internat. Mercantile Marine Co.,* 245 N. Y. 361.

b. The proviso in Title 49, U. S. Code, Section 20 (11) relating to baggage does not permit carriers to limit liability with respect to baggage where such limitation would operate as an exemption, whole or partial. The rule regarding liability for baggage was not altered by such proviso.

Galveston &c Ry Co. v. *Woodbury,* 254 U. S. 357.

3

The State Court erred in declaring valid the provisions of respondents' tariffs exempting them from liability for the loss of the jewelry contained in plaintiff's baggage.

a. Such tariff provisions are in violation of Title 49, U. S. Code, Section 20 (11) which applies to baggage.

Boston & Maine R. R. v. *Hooker*, 233 U. S. 97;
Adams Express v. *Croninger*, 226 U. S. 491;
Hartzberg v. *N. Y. Central R. R.*, 181 Misc. 129, aff'd 268 App. Div. 904, aff'd 295 N. Y. 103, cert. den. 328 U. S. 849.

b. Admittedly respondents cannot account for the loss of petitioner's property (R. fol. 123) and their negligence is therefore established.

Galveston Ry. Co. v. *Wallace*, 223 U. S. 491.

c. Admittedly there was no actual fraud on the part of petitioner (R. fol. 125) and inasmuch as Rule 9-a of respondents' tariffs provides a rate for prohibited articles, included in baggage without fraudulent intent, such as petitioner's jewelry, a penalty for their inclusion is provided but the bailment is preserved and respondents are liable for the value of such articles.

Araje v. *Pennsylvania R. Co.*, 251 N. Y. 354.

4

That this Court has not decided the question whether the imposition of a ceiling on baggage beyond which a passenger may not declare a value is legal. In *New York, New Haven & Hartford RR* v. *Nothnagle* (346 U. S. 128), a recent case dealing with baggage liability, this Court said (footnote): "We need not now consider * * * whether a carrier's refusal to handle property above a certain value is permissible at all". The State Court has held in this case not only that such refusal is permissible but, further, that the carrier is under no liability for property received for transportation in excess of such value.

5

The holding of the State Court that the adoption of rules by railroads in interstate commerce whereby they may exempt themselves from liability for the loss of jewelry and limit their liability for the loss of other baggage, where no choice of rates is offered under which the passenger could obtain full value coverage, is authorized by Section 1 (6) and Section 6 of Title 49, U. S. Code, is contrary to the provisions of Section 20 (11) thereof, which prohibits carriers from exempting themselves from liability. Exemptions from liability, whether total or partial exemptions, are forbidden by Section 20 (11).

Union Pacific R. R. v. *Burke* (*supra*).

6

The holding of the State Court that the tariff provisions relied upon by respondents remain binding with the force of a statute until held by the Interstate Commerce Commission to be unreasonable is not in accord with the decisions of this Court.

Chicago &c. Ry. Co. v. *McCaul-Dinsmore Co.*, 253 U. S. 97;
Boston & Maine R. R. v. *Piper*, 246 U. S. 439;
China Fire Ins. Co. v. *Davis*, 50 Fed. 2nd 389, cert. den. *Mellon* v. *China Fire Ins. Co.*, 284 U. S. 658;
Franklin v. *Southern Pacific Co.*, 203 Cal. 380, cert. den. 278 U. S. 621.

The cases cited by the State Court* do not support its holding. The power of the Commission to construe and pass upon the validity of the tariff provisions should be defined and determined by this Court.

---

* *Northern Railway* v. *Merchants Elev. Co.*, 259 U. S. 285; *Lowden* v. *Simonds, etc. Grain Co.*, 306 U. S. 516; *Penna. R. R. Co.* v. *International Coal Co.*, 230 U. S. 184.

7

The exclusion by the *Second Cummins Amendment* of baggage (39 U. S. Stat. 441, laws of 1916) from the provisions of the *First Cummins Amendment* (38 U. S. Stat. 1196, laws of 1915) which invalidated all limitations of carrier's liability left the question of limitation of baggage liability to be determined under the provisions of the Carmack Amendment of 1906 (34 U. S. Stat. 595, laws of 1906) and the law thus reverted to what it had been before the passage of the First Cummins Amendment, *i. e.*, a carrier could limit its liability for baggage (which it could not do under the First Cummins Amendment—unless the goods were hidden from view) when a choice of rates was given under which the passenger might obtain full value coverage. Under the First Cummins Amendment carriers were absolutely prohibited from limiting liability to an agreed value even where a choice of rates was given and full value could be declared (*Chicago &c. RR.* v. *McCaul-Dinsmore Co.*, 253 U. S. 97). The Second Cummins Amendment merely removed that prohibition as to baggage and thus the law was restored as it had been prior to the First Cummins Amendment (*Adams Express Co.* v. *Croninger*, 226 U. S. 491, *Boston & Maine R. R.* v. *Hooker*, 233 U. S. 97). The State Court has completely misinterpreted the Second Cummins Amendment with respect to baggage and the construction and interpretation of said Amendment is a question which should be passed upon by this Court.

8

An authoritative declaration by this Court of the correct interpretation and proper application of the Interstate Commerce Act relating to exemptions from and limitations of liability by common carriers of baggage in interstate commerce is required.

WHEREFORE, petitioner prays that this Court issue a Writ of Certiorari to the Court of Appeals of the State of New York and to the Supreme Court of the State of New York, County of New York, which is the court which possesses the record herein, directing a transcript of the record be transmitted to this Court for a review of the decision and final order and judgment of the Court of Appeals of the State of New York.

Dated, July 9th, 1955.

Respectfully submitted,

MORRIE SLIFKIN,
Lyceum Building,
39 North Broadway,
Tarrytown, N. Y.

Attorney for Petitioner

REIN, MOUND & COTTON,
PAUL D. COMPTON,
ROBERT T. DAWSON,
of Counsel.

APPENDIX A

(Title 49, U. S. Code, Section 20 Par. (11))

Liability of initial and delivering carrier for loss; limitation of liability; notice and filing of claim. Any common carrier, railroad, or transportation company subject to the provisions of this chapter receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, or any common carrier, railroad, or transportation company delivering said property so received and transported shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transporta-

tion company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is declared to be unlawful and void: *Provided,* That if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water and by and under the laws and regulations applicable to transportation by water, and the liability of the initial or delivering carrier shall be the same as that of such carrier by water: *Provided, however,* That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this title;

and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the commission is empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary livestock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses: *Provided further,* That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided further,* That all actions brought under and by virtue of this paragraph against the delivering carrier shall be brought, and may be maintained, if in a district court of the United States, only in a district, and if in a State court, only in a State through or into which the defendant carrier operates a line of railroad: *Provided further,* That it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice: *And provided further,* That for the purposes of this paragraph and of paragraph (12) of this section the delivering carrier shall be construed to be the carrier performing the line-haul service nearest to the point of destination and not a carrier performing merely a switching service at the point of destination: *And provided further,* That the liability imposed by this paragraph shall also

apply in the case of property re-consigned or diverted in accordance with the applicable tariffs filed as in this chapter provided. Feb. 4, 1887, c. 104, Pt. I, § 20, 24 Stat. 386; June 29, 1906, c. 3591, § 7, 34 Stat. 593; Mar. 4, 1915, c. 176, § 1, 38 Stat. 1196; Aug. 9, 1916, c. 301, 39 Stat. 441; Feb. 28, 1920, c. 91, §§ 436-438, 41 Stat. 494; July 3, 1926, c. 761, 44 Stat. 835; Mar. 4, 1927, c. 510, § 3, 44 Stat. 1448; Apr. 23, 1930, c. 208, 46 Stat. 251; Aug. 9, 1935, c. 498, § 1, 49 Stat. 543; Sept. 18, 1940, c. 722, Title I, § 13(b), 54 Stat. 919.

(Title 49, U. S. Code, Section 1 Par. (6))

Classification of property for transportation; regulations and practices. It is made the duty of all common carriers subject to the provisions of this chapter to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this chapter which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this chapter upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful. (41 Stat. 475.)

Appendix A

(Title 49, U. S. Code, Section 6)

Schedules and statements of rates, etc., joint rail and water transportation.—(1) Schedule of rates, fares, and charges; filing and posting. Every common carrier subject to the provisions of this chapter shall file with the commission created by this chapter and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part of the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this chapter.

(2) Schedule of rates through foreign country. Any common carrier subject to the provisions of this chapter receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by this chapter, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

(3) Change in rates, fares, etc.; notice required; simplification of schedules. No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: Provided, That the commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general

order applicable to special or peculiar circumstances or conditions: Provided further, That the commission is authorized to make suitable rules and regulations for the simplification of schedules of rates, fares, charges, and classifications and to permit in such rules and regulations the filing of an amendment of or change in any rate, fare, charge, or classification without filing complete schedules covering rates, fares, charges or classifications not changed if, in its judgment, not inconsistent with the public interest.

(4) Joint tariffs. The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

(5) COPIES OF TRAFFIC CONTRACTS TO BE FILED. Every common carrier subject to this chapter shall also file with said Commission copies of all contracts, agreements, or arrangements, with other common carriers in relation to any traffic affected by the provisions of this chapter to which it may be a party: Provided, however, That the Commission, by regulations, may provide for exceptions from the requirements of this paragraph in the case of any class or classes of contracts, agreements, or arrangements, the filing of which, in its opinion, is not necessary in the public interest.

(6) FORM AND MANNER OF PUBLISHING, FILING, AND POSTING SCHEDULES; UNLAWFUL USE. The schedules required by this section to be filed shall be published, filed, and posted in such form and manner as the Commission by regulation

shall prescribe; and the Commission is authorized to reject any schedule filed with it which is not in accordance with this section and with such regulations. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(7) Transportation without filing and publishing rates forbidden; rebates; privileges. No carrier, unless otherwise provided by this chapter, shall engage or participate in the transportation of passengers or property, as defined in this chapter, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this chapter; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs.

(8) Preference to shipments for United States. In time of war or threatened war preference and precedence shall, upon demand of the President of the United States, be given, over all other traffic, for the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic. And in time of peace shipments consigned to agents of the United States for its use shall be delivered by the carriers as promptly as possible and without regard to any embargo that may have been declared, and no such embargo shall apply to shipments so consigned.

(9) Schedule lacking notice of effective date. The commission may reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the commission shall be void and its use shall be unlawful.

(10) Penalty for failure to comply with regulations In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the commission under the provisions of this section, such carrier, receiver, or trustee shall be liable to a penalty of $500 for each such offense, and $25 for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

(11) JURISDICTION OF COMMISSION OVER TRANSPORTATION BY RAIL AND WATER. When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single state, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction otherwise given by this chapter:

(a) To establish physical connection between the lines of the rail carrier and the dock at which interchange of passenger or property is to be made by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock

to the limits of the railroad right-of-way, or by directing either or both the rail and water carrier, individually or in connection with one another to construct and connect with the lines of the rail carrier a track or tracks to the dock. The commission shall have full authority to determine and prescribe the terms and conditions upon which these connecting tracks shall be operated, and it may, either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier: Provided, That construction required by the commission under the provisions of this paragraph shall be subject to the same restrictions as to findings of public convenience and necessity and other matters as is construction required under section 1 of this chapter.

(b) To establish proportional rates or maximum, or minimum, or maximum and minimum proportional rates, by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

(12) JURISDICTION OF COMMISSION OVER CARRIERS CONTRACTING WITH WATER CARRIERS OPERATING TO FOREIGN PORTS—If any common carrier subject to this chapter and chapters 8 and 12 of this title enters into arrangements with any water carrier operating from a port in the United States to a foreign country, through the Panama Canal or otherwise, for the handling of through business between interior points of the United States and such foreign country, the Com-

mission may by order require such common carrier to enter into similar arrangements with any or all other lines of steamships operating from said port to the same foreign country. Feb. 4, 1887, c. 104, Part I, § 6, 24 Stat. 380; Mar. 2, 1889, c. 382, § 1, 25 Stat. 855; June 29, 1906, c. 3591, § 2, 34 Stat. 586; June 18, 1910, c. 309, § 9, 36 Stat. 548; Aug. 24, 1912, c. 390, § 11, 37 Stat. 568; Aug. 29, 1916, c. 417, 39 Stat. 604; Feb. 28, 1920, c. 91, §§ 409-413, 41 Stat. 483; Aug. 9, 1935, c. 498, § 1, 49 Stat. 543; Sept. 18, 1940, c. 722, Title I, § 8, 54 Stat. 910; Aug. 2, 1949, c. 379, § 5, 63 Stat. 486.

(Title 49, U. S. Code, Section 15)

Determination of rates, routes, etc.; routing of traffic; disclosures, etc.—(1) COMMISSION EMPOWERED TO DETERMINE AND PRESCRIBE RATES, CLASSIFICATIONS, ETC.—Whenever, after full hearing, upon a complaint made as provided in section 13 of this chapter, or after full hearing under an order for investigation and hearing made by the commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this chapter for the transportation of persons or property, as defined in section 1 of this title, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this chapter, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this chapter, the commission is authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum

or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation of practice so prescribed.

(2) ORDERS OF COMMISSION.—Except as otherwise provided in this chapter, all orders of the commission, other than orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by the commission, or be suspended or set aside by a court of competent jurisdiction.

(3) ESTABLISHMENT OF THROUGH ROUTES, JOINT CLASSIFICATIONS, JOINT RATES, FARES, ETC.—The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this chapter, or by carriers by railroad subject to this chapter and common carriers by water subject to chapter 12 of this title, or the maxima or minima, or maxima and minima,

to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section.

(4) THROUGH ROUTES TO EMBRACE ENTIRE LENGTH OF RAILROAD, TEMPORARY THROUGH ROUTES—In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation; *Provided, however,* That in prescribing through routes the Commis-

sion shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest.

(5) Transportation of livestock in carload lots; services included. Transportation wholly by railroad of ordinary livestock in carload lots destined to or received at public stockyards shall include all necessary service of unloading and reloading en route, delivery at public stockyards of inbound shipments into suitable pens, and receipt and loading at such yards of outbound shipments, without extra charge therefor to the shipper, consignee or owner, except in cases where the unloading or reloading en route is at the request of the shipper, consignee or owner, or to try an intermediate market, or to comply with quarantine regulations. The commission may prescribe or approve just and reasonable rules governing each of such excepted services. Nothing in this paragraph shall be construed to affect the duties and liabilities of the carriers now existing [Feb. 28, 1920] by virtue of law respecting the transportation of other than ordinary livestock, or the duty of performing service as to shipments other than those to or from public stockyards.

(6) Commission to establish just divisions of joint rates, fares, or charges; adjustments. Whenever, after full hearing upon complaint or upon its own initiative, the commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the commission shall by order prescribe the just, reasonable and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares and charges, the commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

(7) COMMISSION TO DETERMINE LAWFULNESS OF NEW RATES; SUSPENSION; REFUNDS—Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulations, or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the

hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after September 18, 1940, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

(8) Shipper's choice of route to be observed. In all cases where at the time of delivery of property to any railroad corporation being a common carrier for transportation subject to the provisions of this chapter to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this chapter provided to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and

deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading: Provided, however, That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported.

(9) Liability of carriers where property is delivered contrary to routing instructions. Whenever property is diverted or delivered by one carrier to another carrier contrary to routing instructions in the bill of lading, unless such diversion or delivery is in compliance with a lawful order, rule, or regulation of the commission, such carriers shall, in a suit or action in any court of competent jurisdiction, be jointly and severally liable to the carrier thus deprived of its right to participate in the haul of the property, for the total amount of the rate or charge it would have received had it participated in the haul of the property. The carrier to which the property is thus diverted shall not be liable in such suit or action if it can show, the burden of proof being upon it, that before carrying the property it had no notice, by bill of lading, waybill or otherwise, of the routing instructions. In any judgment which may be rendered the plaintiff shall be allowed to recover against the defendant a reasonable attorney's fee to be taxed in the case.

(10) Direction of unrouted traffic by commission. With respect to traffic not routed by the shipper, the commission may, whenever the public interest and a fair distribution of the traffic require, direct the route which such traffic shall take after it arrives at the terminus of one carrier or at a junction point with another carrier, and is to be there delivered to another carrier.

(11) Disclosure or solicitation of information concerning shipments unlawful; exceptions. It shall be unlawful for any common carrier subject to the provisions of this chapter, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or to permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used; Provided, That nothing in this chapter shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any State or Federal court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

(12) Penalty for violation of preceding provisions. Any person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than $1,000.

(13) ALLOWANCE FOR SERVICE OR FACILITIES FURNISHED BY SHIPPER—If the owner of property transported under this chapter directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be published in tariffs or schedules filed in the manner provided in this chapter and shall be no more than is just and reasonable, and the commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section. As amended Mar. 4, 1927, c. 510, § 2, 44 Stat. 1447; Aug. 9, 1935, c. 498, § 1, 49 Stat. 543; Sept. 18, 1940, c. 722, Title I, § 10(a-d), 54 Stat. 911, 912.

(14) Other powers of commission not excluded. The foregoing enumeration of powers shall not exclude any power which the commission would otherwise have in the making of an order under the provisions of this chapter. (Feb. 4, 1887, c. 104, § 15, 24 Stat. 384; June 29, 1906, c. 3591, § 4, 34 Stat. 589; June 18, 1910, c. 309, § 12, 36 Stat. 551; and Feb. 28, 1920, c. 91, §§ 418-421, 41 Stat. 484-488.)

APPENDIX B

(Opinion of Trial Term Reported in 127 N. Y. S. 2d 216 (not officially reported))

BEAUMONT v. PENNSYLVANIA R. Co. *et al.*

SUPREME COURT

TRIAL TERM, NEW YORK COUNTY, PART II

Nov. 27, 1953

AURELIO, *Justice.*

Plaintiff sues to recover for the loss of two trunks and their contents consisting of jewelry, furs, used clothing and other personal property. The evidence before me consists entirely of the following conceded facts.

On May 19, 1945, at West Palm Beach, Florida, the plaintiff through her agent checked nine trunks with the defendant Florida East Coast Railway Company. The trunks were checked to New York City on four passenger tickets for transportation between said points. No excess valuation was declared by plaintiff or her agent (Defendants' Exhibit A). But an additional amount of $46.98 for 630 pounds excess weight was paid (Defendants' Exhibit C). The tariff governing this transaction (Defendants' Exhibit B) provided that 150 pounds of baggage or property not exceeding $100 in value would be checked without additional charge for each adult passenger (Defendants' Exhibit B—Rule 10A). A valuation slip was signed on behalf of plaintiff with declared valuation of $400 for the nine trunks and provides that in case of loss claim will be limited to that amount or prorated in case of partial loss. This contract is in conformity with Defendants' Exhibit B, baggage tariff number 15, I. C. C. number H-4459, which was

filed with the Interstate Commerce Commission and kept open for public inspection in compliance with sections 6 and 20(11) of the Interstate Commerce Act, 49 U. S. C. A. § 6, 20(11).

The trunks were carried by the Pennsylvania Railroad Company into New York City on May 21, 1945. Demand for delivery was made by plaintiff on May 25, 1945. Two of the said trunks were not delivered to the plaintiff and their loss has not been accounted for. The total value of the missing trunks and contents was $55,839.50, consisting of jewelry, furs and other articles described as baggage.

No inquiry was made by Florida as to the contents of the trunks, at the time they were checked as baggage. There is no claim of fraud in checking the contents as baggage.

Plaintiff held an insurance policy upon some of the contents in the lost trunks which did not provide for avoidance in the event the carrier's tariff provided that the carrier have the benefit thereof.

There was received in evidence upon plaintiff's offer and over defendant's objection relevant freight tariffs to show that the property involved could not be shipped as freight at their full value. This is likewise true under the baggage tariff.

Plaintiff's complaint contains ten causes of action for recovery of the loss of the two trunks and their contents. In the two causes of action against Florida, the trunks and contents are alleged in one to be property, and in the other to be baggage. The remaining eight causes of action are against defendant Pennsylvania Railroad Company. Two are alleged against it as the delivering carrier of which one alleges the trunks and contents to be property, and the other to be baggage. The fifth and sixth causes claim a

breach of the contract of bailment alleging the trunks arrived in New York City on May 21, 1945, remaining in possession of Pennsylvania for a consideration paid or to be paid, and alleging in one cause the trunks and contents were property, and in the other baggage.

Two additional causes alleged conversion by Pennsylvania as a common carrier of the property or of baggage, and finally, two causes alleged conversion by Pennsylvania as a bailee of property or of baggage.

The defendants set forth three affirmative defenses. The first alleges exemption from liability for loss of jewelry. This rests on a filed baggage tariff which contains the definition of personal baggage, prohibits transportation of money or jewelry in baggage and imposes on the passenger the full risk in the event of acceptance of property not authorized as baggage. The second defense seeks the benefit of plaintiff's insurance in so far as such benefit does not avoid the policy. The third defense is partial and rests on a claim limiting liability by reason of plaintiff's declared valuation. It is conceded defendants were common carriers.

The foregoing, apart from the consideration of the defenses, support the customary claim for recovery of value of property entrusted to a carrier for transportation coincident with first-class passenger tickets and not redelivered by it as a result of an unexplained loss. There is nothing to show bailment except as an incident to transportation or any conduct supporting a conclusion of conversion or any additional claim for conversion or for breach of bailment. Upon the claims of conversion and bailment issues of fact are presented requiring dismissal of the proceeding. McCloy v. Pennsylvania Railroad Co., 267 App. Div. 179, 45 N. Y. S. 2d 323. As a consequence, plaintiff's claim

in its entire aspect is subject to the defenses and this is so whether defendants are guilty of negligence, ordinary or gross. McCloy v. Pennsylvania Railroad Co., supra.

As heretofore stated defendants' claim that baggage tariff No. 15 (Defts' Ex. B) to which plaintiff's contract of carriage (Defts' Ex. A) was subject, prohibited the carriage of jewelry as baggage and exempted them from liability. It is claimed further that tariff 15 permitted limitation of liability and, consequently, the liability is limited by plaintiff's declared valuation of $400.

The baggage was obviously mislabeled. Apart from permissible imposition of penalty for nonfraudulent mislabeling, the carriers' liability remains. Araje v. Pennsylvania Railroad Co., 251 N. Y. 354, 167 N. E. 497. Also, despite the filing or approval of any tariff, its validity in the circumstances remains for the court to determine. China Fire Ins. Co. v. Davis, 2 Cir., 50 F. 2d 389, 76 A. L. R. 1259; Boston & Maine Railroad v. Piper, 246 U. S. 439, 38 S. Ct. 354, 62 L. Ed. 820; Chicago, M. & St. P. Railway Co. v. McCaul-Dinsmore Co., 253 U. S. 97, 40 S. Ct. 504, 64 L. Ed. 801. Any tariff so filed or approved may not contravene statute. Hartzberg v. N. Y. Central R. R. Co., 181 Misc. 129, 41 N. Y. S. 2d 345, 348, affirmed 268 App. Div. 904, 51 N. Y. S. 2d 741, affirmed 295 N. Y. 703, 65 N. E. 2d 337.

In Hartzberg v. N. Y. Central R. R. Co., supra, a jeweler's trunk was left in the baggage room of the defendant railroad. The receipt provided limitation of liability for baggage "* * * in accordance with tariff regulations. Excess valuation will be subject to charge". The defenses in that case were similar to those here pleaded, that there was exculpation from all liability, the tariff prohibited transportation of jewelry as baggage, and that such trans-

portation was at the owner's risk, that liability was limited because of the failure to declare a higher valuation and to make appropriate payment therefor and, finally, that plaintiff had been fully indemnified by his insurer. The court found and determined that section 20(11) of the Interstate Commerce Act, 49 U. S. C. A. § 20(11), forbids exemption of a common carrier from liability for any loss, damage or injury to property caused by it and thus exemption by rule prohibiting inclusion of jewelry in baggage is not permissible, despite any innocent misdescription of the goods by the passenger. The carrier remains liable to the extent of the character and value of the goods so described. The first defense is hence insufficient.

The second defense which claims the benefit of plaintiff's insurance is likewise unavailable. A rule giving to the carrier full benefits of any insurance effected on property shipped is invalid and contrary to the Interstate Commerce Act, § 2, 49 U. S. C. A. §2, prohibiting discrimination by the carrier. Discrimination is effected by giving to the shipper a choice to insure or not to insure. In the event of insurance, with resultant benefit to the carrier, it has received an added compensation for its services, forbidden by law. National Garment Co. v. N. Y., Chicago & St. Louis Railway Co., 8 Cir., 173 F. 2d 32. The approval by the Interstate Commerce Commission of any filed tariff rule conferring such benefit is not conclusive upon the question of conformity of the provision with governing statute. China Fire Ins. Co. v. Davis, supra.

The third partial defense attempting to limit liability is also deemed insufficient. "In order that a carrier may avail itself of the benefit of its assertion of limitation of liability to an agreed valution, it must appear that a choice of rates was present so that the passenger or shipper

might have secured full coverage or protection for his property by payment of a higher rate for the carriage." Hartzberg v. N. Y. Central R. R. Co., supra, 181 Misc. at page 136, 41 N. Y. S. 2d 352. See also Union Pacific Railroad Company v. Burke, 255 U. S. 317, 41 S. Ct. 283, 65 L. Ed. 656; Boston & Maine Railroad Company v. Piper, supra; Cincinnati, New Orleans & Texas Pacific Railroad Co. v. Rankin, 241 U. S. 319, 327, 36 S. Ct. 555, 60 L. Ed. 1022.

The defendants' tariffs here involved precluded the shipper from declaring a valuation in excess of $2,500. The failure to afford plaintiff a proper choice, that is to say a choice to cause the transportation of her property at its full actual value upon payment of appropriate excess charges or at a lesser value, renders the attempted limitation and declared valuation ineffective. "Limitation imposed without choice of rates between limited and unlimited liability is not valid." Kilthau v. International Mercantile Marine Co., 245 N. Y. 36, 157 N. E. 267, 268; see also N. Y., N. H. & Hartford Railroad Co. v. Nothnagle, 346 U. S. 128, 73 S. Ct. 986, 97 L. Ed. 1500; Chicago, M. & St. P. R. R. Co. v. McCaul-Dinsmore Co., 253 U. S. 97, 40 S. Ct. 504, 64 L. Ed. 801.

There remains for consideration the tariffs, Plaintiff's Exhibits 1, 2 and 3, received in evidence over defendants' objections. These have not entered into consideration of the issues thus far discussed and determined. As already indicated liability may be adjudged only upon the first and third causes of action as to the defendant Florida and upon the second and fourth causes of action as to defendant Pennsylvania.

Such liability attaches whether defendants transported baggage or property. Considered as baggage, the loss of

plaintiff's property is solely and wholly the risk and liability of defendants, since they could not exempt and did not properly limit baggage liability.

If, however, transportation under some classification had been available with choice of coverage at full actual value or less, the result here might be different. Such a situation was considered by the court in the Hartzberg case, supra. In that case the defendant's freight rates did afford such choice and would not have been denied to the plaintiff there, if sought. Because of that factual situation, the court there sustained the defense of limited liability.

It was for this purpose that the plaintiff proposed to show that the circumstances here are quite different and that no classification was available to plaintiff which would have enabled her to ask for and receive, upon proper payment, coverage at full actual value of any part of the property contained in the lost trunks and accepted by the defendants for transportation.

However, the burden was upon the defendants to establish by proper factual proof that a limited liability was properly to be imposed in this case. In the absence of affirmative proof in that direction, the third defense remains not established, and the plaintiff's claim must prevail. Accordingly, plaintiff's Exhibits 1, 2 and 3 which established the negative cannot be deemed prejudicial.

Judgment is accordingly directed in favor of the plaintiff and against the defendant Pennsylvania Railroad Company upon the second and fourth causes of action, and in favor of the plaintiff against the remaining defendants upon the first and third causes of action in the stipulated sum of $55,839.50 the actual value of the lost property, with interest from May 25, 1945 together with taxable costs and

disbursements, and in favor of the defendant Pennsylvania Railroad Company dismissing the complaint upon causes of actions 5 to 10, inclusive.

All motions upon which the court reserved decision and not herewith disposed of are denied.

(Opinion of Appellate Division Reported in 284 App. Div. 354, 131 N. Y. S. 2d 652)

COHN, Justice.

These cross-appeals involve the question of whether interstate railroads can by their tariffs limit their liability for loss of passenger baggage to passenger's declared value thereof, and whether they may prohibit the inclusion of jewelry in passenger baggage, and, exempt themselves from liability for such carriage.

The stipulated facts are as follows: On May 19, 1945, at West Palm Beach, Florida, plaintiff by her agent checked through with defendant Florida East Coast Railway Company as the initial carrier nine trunks containing plaintiff's property as baggage on four first-class passenger tickets for transportation to New York City. The trunks arrived at their destination on May 21, 1945, defendant Pennsylvania Railroad Company being the final carrier. On May 25, 1945, when plaintiff made demand for her trunks in New York City, it was discovered that two could not be found. Defendants were unable to account for their loss. The two missing trunks contained property belonging to plaintiff worth $55,839.50, consisting of jewelry valued at $39,152.50, and wearing apparel valued at $16,687.

At the time the trunks were checked with defendant Florida East Coast Railway Company at West Palm Beach, plaintiff's agent signed a baggage declaration in which $400 was specifically declared to be the valuation of all

nine trunks, calculated at the rate of $100 for each of the four passenger tickets. This declaration specifically provided that in the event of a loss any recovery would be limited to $100 for each of the four tickets or prorated in case of partial loss. Plaintiff's agent paid no additional valuation charge although the declaration permitted additional insurance up to a maximum of $2,500 per ticket upon the payment of an extra charge. Plaintiff, if she chose, could have declared a total valuation up to $10,000, i. e., $2,500 for each of the four tickets. Instead she elected to take the minimum valuation and thus avoided paying any excess valuation charges.

The tariff covering the shipment involved was Tariff, No. 15, I. C. C. No. H-4459; it had been filed with the Interstate Commerce Commission and kept open for public inspection in compliance with Section 6 of the Interstate Commerce Act, Title 49 U. S. C. A. § 6.

After trial without a jury plaintiff was awarded a judgment of $84,634.21, which represented the loss claimed plus interest and costs.

The complaint contains ten causes of action.

The first cause of action against Florida East Coast Railway Company and its trustees, alleges that said defendants received and agreed to transport plaintiff's nine trunks containing her property to New York City. The third cause of action differs from the first only in that it is there alleged that plaintiff's nine trunks were received by said defendants "as baggage". The second and fourth causes of action are identical with the first and third except that they are against defendant Pennsylvania Railroad Company. The fifth through the tenth causes of action, inclusive, which were dismissed—from which dismissal plaintiff appeals—alleged liability against defendant Penn-

sylvania Railroad Company alone, predicated upon theories of bailment and conversion.

Defendants' answers interposed three defenses, only two of which are involved in this appeal. The first alleged that under the railroads' tariffs, filed as required by law with the Interstate Commerce Commission covering this shipment, jewelry "must not be enclosed in baggage to be checked" and that "the carriers * * * will not be responsible for such articles enclosed in baggage," [Tariff Rule 4(d)] such prohibited property, if included in baggage, to be "entirely at the risk of the passenger or owner." (Tariff Rule 9.) The other was a partial defense alleging that under Tariff Rule 10(a), baggage not exceeding $100 in value "may be checked without additional charge for each adult passenger" and that under Tariff Rule 11(d) a passenger not declaring a greater valuation would be bound by the $100 value but allowing the passenger to obtain additional insurance coverage up to a maximum of $2,500 for each ticket by declaring a greater valuation and paying an additional charge.

The trial court, Sup., 127 N. Y. S. 2d 216, dismissed defendants' defenses for insufficiency holding that the jewelry provision contravened Section 20(11) of the Interstate Commerce Act, U. S. C. A., Title 49, § 20(11), which statute prohibited and declared void any attempt by a railroad to regulate, limit or exempt itself from liability, and that the limited liability provision contained in plaintiff's baggage declaration was invalid because the carrier had not made available to the plaintiff-shipper a choice of rates so that the passenger could have secured full value coverage by payment of a higher rate. In so ruling, we think that the learned Justice at trial term erred.

Section 20(11) of the Interstate Commerce Act provides that any interstate carrier "shall be liable * * * for any loss,

damage, or injury to such property caused by it * * * and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier * * * from the liability hereby imposed". However, that same section also specifically provides that the "provisions * * * respecting liability for full actual loss * * * notwithstanding any limitation of liability * * * and declaring any such limitation to be unlawful * * * *shall not apply* * * * *to baggage carried on passenger trains* * * *". (Emphasis ours.) This latter exclusion provision permits a carrier to limit its liability with respect to baggage. Accordingly, defendants' tariffs limiting their liability with respect to baggage carried on a passenger train did not conflict with the Interstate Commerce Act, but were in ful accord with it. Boston & Maine Rd. v. Hooker, 233 U. S. 97, 116, 34 S. Ct. 526, 58 L. Ed. 868; National Baggage Committee v. A. T. & S. F. Ry. Co., 32 I. C. C. 152.

The "baggage" covered by Section 20(11) refers to property checked as was that of plaintiff's with the carrier for transportation on a passenger ticket. A passenger's luggage not so checked falls within the category of other property. This was pointed out by the Supreme Court of the United States in New York, N. H. & H. R. Co. v. Nothnagle, 1952, 346 U. S. 128, 73 S. Ct. 986, 97 L. Ed. 1500, where the Court expressly recognized the difference in statutory treatment between baggage and other property.

It is not denied that for more than forty years carriers have been handling baggage under tariff rules duly filed giving passengers a choice of rates dependent upon value up to a valuation of $2,500 and excluding from baggage service property valued in excess of that amount. The adoption of such rules is authorized by Sections 1(6) and 6 of the Interstate Commerce Act. Under Section 15 of that Act such rules are subject to challenge only before the Interstate Commerce Commission either on its own motion

or upon complaint to review the reasonableness of such regulations or classifications. Great Northern R. v. Merchants Elevator Co., 259 U. S. 285, 291, 42 S. Ct. 477, 66 L. Ed. 943. Unless the Interstate Commerce Commission holds that such rules are unreasonable they remain binding upon carrier and passenger alike with the force of a statute. Lowden v. Simonds Etc. Grain Co., 306 U. S. 516, 59 S. Ct. 612, 83 L. Ed. 953; Pennsylvania R. R. Co. v. International Coal Mining Co., 230 U. S. 184, 197, 33 S. Ct. 893, 57 L. Ed. 1446.

A carrier also has a right, subject to Commission review as to reasonableness, to adopt tariff rules excluding articles of high intrinsic value from rail service and absolving itself from responsibility therefor when shipped contrary to the rules. The tariff rules at issue here excluding jewelry from baggage service are within this category.

Plaintiff was prohibited by Tariff Rule 4(d) from shipping jewelry in baggage and did so entirely at her own risk. Such a provision excluding certain property completely from transportation has been held not to constitute a limitation provision and therefore to be perfectly valid. Since the Interstate Commerce Commission has determined that a tariff provision identical with the instant one was effective to prevent recovery for jewelry wrongfully included in baggage, Jones v. L. I. R. R. Co., 74 I. C. C. 238, 240, ther can be no question of the reasonableness of these tariff provisions.

In determining that the limitation of liability provision was invalid, the trial court relied upon the language employed in Hartzberg v. New York Central R. R. Co., 181 Misc. 129, 41 N. Y. S. 2d 345, affirmed 268 App. Div. 904, 51 N. Y. S. 2d 741, affirmed 295 N. Y. 703, 65 N. E. 2d 337, certiorari denied 328 U. S. 849, 66 S. Ct. 1121, 90 L. Ed. 1622, where the baggage was lost before it was checked and

before any value had been declared. The main point litigated there was whether the limitation of liability provisions of the interstate tariff were applicable in view of the fact that the baggage was lost before it had been checked on the passenger's ticket and before he had an opportunity to declare any value. The Trial Court held that the trunk was in interstate transportation when accepted at the baggage room and subject to the provisions of the interstate baggage tariff which specified a valuation of $100 in the absence of a declaration in excess of that amount. With respect to limitation of liability under the Interstate Commerce Act plaintiff there argued that the $2,500 ceiling on declared value in the baggage tariff deprived him of a choice of rates with the opportunity to declare full value. The Court found it unnecessary to rule on this point because it decided that the sample trunk could have been shipped as freight and that the freight tariff made express provision for declaring up to full value upon the payment of graduated freight charges. That portion of the opinion, 181 Misc. at page 135, 136, 41 N. Y. S. 2d 345, 351, which appeared to accept the premise that limitation of liability in the case of baggage depends upon a choice of rates up to its full value was dictum. The cases cited by the Court in support of the dictum involved freight shipped under freight tariffs, and did not relate to passengers' baggage.

We find that Section 20(11) of the Interstate Commerce Act, U. S. C. A., Title 49, § 20(11), specifically excepts "baggage" from full value coverage and permits carriers to limit their liability with respect to property carried as baggage and permits them to prohibit the inclusion in baggage of certain kinds of property of high intrinsic value. Plaintiff's jewelry, valued at $39,152.50, was effectively excluded by defendants' tariffs from transportation and its inclusion and subsequent loss were entirely at the risk of plaintiff. It would be contrary to every principle

of justice and reason to hold a carrier of baggage liable for any fantastic baggage claim where as here the carrier is completely uninformed as to the value of the contents of the shipment.

Finally, as to the balance of plaintiff's property included in her trunks, plaintiff, through her agent, saw fit voluntarily to choose the minimum valuation of $400 instead of the highest of $10,000, and thus avoided paying any excess valuation rates. Whether or not she intended to misrepresent to the carriers makes little difference so far as defendants are concerned, since in either event the consequence has been to deprive the carriers of compensation in accordance with their rates. In these circumstances, plaintiff is estopped to assert a valuation greater than the $400 declared by her agent. Hart v. Pennsylvania R. R., 112 U. S. 331, 340, 5 S. Ct. 151, 28 L. Ed. 717; Adams Express Co. v. Croninger, 226 U. S. 491, 510, 33 S. Ct. 148, 57 L. Ed. 314. The correct principle in such case is well stated in Caldwell v. United States Exp. Co., 36 Pa. Super. 465, 472-3:

> "We may concede, as an abstract legal proposition, that where a shipper, without any intention to defraud, but through ignorance, carelessness, or other like cause, so prepares his valuable goods for shipment, as to delude even the reasonably careful agents of the carrier into the belief they are not of any especial value, he may not afterwards recover such especial value, in case of loss. This is founded in reason and justice because such conduct, on the part of a shipper, even though not immoral because not consciously wrong, results in the same injurious consequences to the carrier, as if it had been the offspring of an intention to defraul, 'for it goes to deprive the carrier of the compensation he is entitled

to, in proportion to the value of the article intrusted to his care and the consequent risk he incurs; and it tends to lessen the vigilance the carrier would otherwise bestow:' Relf v. Rapp, 3 Watts & S. 21."

Not having declared the full $2,500 value on each ticket, plaintiff is not even in a position to raise the question as to whether defendants' rates had deprived her of obtaining full coverage.

As to plaintiff's appeal, the Court properly dismissed the fifth to tenth causes of action, inclusive, alleging liability of defendant Pennsylvania Railroad on theories of breach of a bailment contract and conversion, since at the time of the loss, the baggage was in said defendant's possession as an incident to an interstate transportation agreement, and consequently the terms of the contract of carriage and the tariffs apply.

For the foregoing reasons the judgment in plaintiff's complaint is modified to the extent of reducing the judgment to $400 plus interest and as so modified the judgment is affirmed with costs to defendants. Settle order.

Judgment unanimously modified in accordance with the opinion herein and, as so modified, affirmed with costs to the defendants.

Settle order on notice.

All concur.

(Memorandum Decision, Dated April 21, 1955, of the Court of Appeals of the State of New York, 308 N. Y. 920)

Judgment affirmed with costs; no opinion.

APPENDIX C

(Record References Showing Federal Questions Raised)

The defendant Pennsylvania Railroad Company pleaded in its answer the following affirmative defenses (R. P. 18-20, 21-22):

"For a First Separate and Affirmative Defense, said Defendant Alleges, upon Information and Belief:

16. That at all the times herein mentioned, the defendant, The Pennsylvania Railroad Company, was and is a foreign corporation, duly organized and existing under and by virtue of the laws of the State of Pennsylvania, engaged in interstate commerce by railroad, and duly authorized to do business in the State of New York.

17. That said defendant filed and caused to be filed, or joined in the filing of schedules or tariffs, as required by law with the Interstate Commerce Commission.

18. Among the tariffs or schedules so filed, or caused to be filed, or joined in by said defendant, was baggage tariff No. 15, bearing ICC No. H4459, and an effective date of March 1, 1944, described as 'local and joint tariff, also joint rail-motor tariff of baggage rules, regulations, rates and charges applying in connection with the transportation of baggage and other articles and property as classified herein. * * *'

19. Said tariff, among other things, provided as follows:

'Baggage Defined.

Rule 4 (a)—Baggage may be either personal or sample or both, defined as follows:

(b)—Personal baggage consists of wearing apparel, toilet articles (except liquids) and similar personal effects in actual use and necessary and appropriate for the wear, use, comfort and convenience of the passenger for the purpose of the journey and not intended for other persons, nor for sale, but does not include prohibited articles (See Rule 9) * * *.

(d)—Money, Jewelry (except sample see rule 9) negotiable papers and like valuables may not be enclosed in baggage to be checked. The carriers issuing and concurring in this tariff will not be responsible for such articles enclosed in baggage. * * *

Rule 9—Baggage or property prohibited because of weight, size, value, or character. Penalty charges against prohibited or unauthorized articles.

(a)—The acceptance of property described below, or not authorized in this tariff is expressly prohibited in baggage service under any circumstances whatever (except as provided in rule 6, covering transportation of public entertainment paraphernalia.)

If such property is delivered to the carrier contrary to the terms of this rule, the carrier will not be responsible for loss, damage or injury to such property; but such property shall be entirely at the risk of the passenger or owner. * * *

Jewelry—(except samples) * * *,

For a First Partial Defense:

23. Repeats and realleges each and every allegation contained in paragraphs of this answer, designated '16, 17, 18 & 19,' with the same full force and effect as if herein set forth at length.

Appendix C

24. Said tariff, among other things, provided as follows:

'Baggage loss—Rule 10—(a) subject to limitations shown in rules 4, 5 & 9 (and except as noted below in this rule or in tariff under which ticket is sold), one hundred and fifty (150) pounds of baggage or property not exceeding one hundred ($100.00) dollars in value, may be checked without additional charge for each adult passenger. * * *

Rule 11—Baggage or property of excess weight or value. * * *

(d)—Unless a greater sum is declared by the passenger (see Exceptions) and charges paid for excess value at time of delivery to carrier, the value of baggage or property belonging to, or check for a passenger, shall be deemed and agreed to be not in excess of the amount specified in Rules 5, 6 & 10, and the carriers issuing and participating in this tariff will not assume responsibility for a greater sum in case of loss or damage.'

25. At the time said nine trunks were presented for checking to the defendant, The Florida East Coast Railway Company at West Palm Beach, Florida, there were tendered four tickets for transportation of four passengers; said nine trunks were checked upon said four tickets; at said time of checking said trunks, the person checking the same signed a valuation slip declaring the value of said nine trunks to be not in excess of $400.00, and also providing that in case of loss or damage, claim will be so limited, or pro rata on each piece as per value indicated in case of partial loss or damage as liability may appear. A photostatic copy of said baggage declaration is hereto annexed and made a part hereof."

Appendix C

The defendant Florida East Coast Railway Company and Floyd M. Loftin and John W. Martin, as Trustees of the Florida East Coast Railway Company, pleaded the following affirmative defenses in their answer (R. P. 25-28, 29-30):

"For a First Separate and Affirmative Defense, said defendants allege, upon Information and Belief:

8. At all the times herein mentioned, the defendant, Florida East Coast Railway Company, was and is a foreign corporation duly organized and existing under and by virtue of the laws of the State of Florida.

9. At all the times herein mentioned, the defendants, Scott M. Loftin and John W. Martin, were and are Trustees of the property of the Florida East Coast Railway Company, and were and are operating as Trustees, said Florida East Coast Railway Company.

10. Said defendants filed or caused to be filed or joined in the filing of schedules or tariffs, as required by law with the Interstate Commerce Commission.

11. Among the tariffs or schedules so filed, or caused to be filed, or joined in said defendants, was baggage tariff No. 15, bearing ICC No. H4459, and an effective date of March 1, 1944, described as 'local and joint tariff, also joint rail-motor tariff of baggage rules, regulations, rates and charges applying in connection with the transportation of baggage and other articles and property as classified herein. * * * '

12. Said tariff, among other things, provided as follows:

'Baggage Defined

Rule 4 (a)—Baggage may be either personal or sample or both, defined as follows:

(b)—Personal baggage consists of wearing apparel, toilet articles (except liquids) and similar personal effects in actual use and necessary and appropriate for the wear, use, comfort and convenience of the passenger for the purpose of the journey and not intended for other persons, nor for sale, but does not include prohibited articles (See Rule 9) * * *.

(d)—Money, jewelry (except samples—see rule 9) negotiable papers and like valuables may not be enclosed in baggage to be checked. The carriers issuing and concurring in this tariff will not be responsible for such articles enclosed in baggage. * * *

Rule 9—Baggage or property prohibited because of weight, size, value, or character. Penalty charges against prohibited or unauthorized articles.

(a)—The acceptance of property described below, or not authorized in this tariff, is expressly prohibited in baggage service under any circumstances whatever (except as provided in rule 6, covering transportation of public entertainment paraphernalia).

If such property is delivered to the carrier contrary to the terms of this rule, the carrier will not be responsible for loss, damage or injury to such property; but such property shall be entirely at the risk of the passenger or owner. * * *

Jewelry—(except samples) * * *,

13. The trunks tendered to the defendants herein for checking and transportation, contained articles prohibited under provisions of said Rule 9, to wit—jewelry, and said articles were at the risk of the passenger or owner.

Appendix C

For a First Partial Defense:

17. Repeat and reallege each and every allegation alleged in paragraphs VIII, IX, X and XI of this answer, with the same full force and effect as if herein set forth at length.

18. Said tariff, among other things, provided as follows:

'Baggage loss—Rule 10—(a) subject to limitations shown in rules 4, 5 & 9 (and except as noted below in this rule or in tariff under which ticket is sold), one hundred and fifty (150) pounds of baggage or property not exceeding one hundred ($100.00) dollars in value, may be checked without additional charge for each adult passenger. • • •

Rule 11—Baggage or property of excess weight or value. • • •

(d)—Unless a greater sum is declared by the passenger (see Exceptions) and charges paid for excess value at time of delivery to carrier, the value of baggage or property belonging to, or checked for a passenger, shall be deemed and agreed to be not in excess of the amount specified in Rules 5, 6 & 10, and the carriers issuing and participating in this tariff will not assume responsibility for a greater sum in case of loss or damage.'

19. At the time said nine trunks were presented for checking to the defendants at West Palm Beach, Florida, there were tendered four tickets for transportation of four passengers; said nine trunks were checked upon said four tickets; at said time of checking said trunks, the person checking the same signed a valuation slip declaring the value of said nine trunks to be

not in excess of $400.00, and also providing that in case of loss or damage, claim will be so limited, or pro rata on each piece as per value indicated in case of partial loss or damage as liability may appear. A photostatic copy of said baggage declaration is hereto annexed and made a part hereof."

The plaintiff contended that the property could not be shipped at full value under the baggage tariff. Plaintiff's counsel stated at the trial (R. P. 46, fol. 137):

> "One of my contentions also is, of course, that under the baggage tariff the merchandise turned over to the railroads, the defendants here, could not have been shipped at full value."

The plaintiff's counsel at the trial moved to strike out the affirmative defenses referred to as being void under the Interstate Commerce Act (R. P. 47, fol. 139).

> "Mr. Dawson: The plaintiff now respectfully moves to strike out the defenses pleaded by the defendants as insufficient in law, as illegal, and as attempting to set up defenses which are void under the Interstate Commerce Act."

The rulings of the courts are found in the opinions printed in Appendix B herein.

APPENDIX D

(Order and Judgment of the Court of Appeals)

COURT OF APPEALS

STATE OF NEW YORK ss.:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 21st day of April in the year of our Lord one thousand nine hundred and fifty-five, before the Judges of said Court.

Witness

The HON. ALBERT CONWAY
Chief Judge, Presiding

RAYMOND J. CANNON
Clerk

Remittitur April 21, 1955
No. 12

HELENE M. BEAUMONT,

Appellant,

vs.

PENNSYLVANIA RAILROAD COMPANY, &ors, &c.,

Respondents.

Be it Remembered, That on the 18th day of January in the year of our Lord one thousand nine hundred and fifty-five, Helene M. Beaumont, the appellant in this cause, came here unto the Court of Appeals, by Rein, Mound & Cotton, her attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department and Pennsylvania Railroad Company, & ors, &c, the respondents in said cause afterwards

appeared in said Court of Appeals by Conboy, Hewitt, O'Brien & Boardman, their attorneys.

Which said Notice of Appeal and return thereto, filed as aforesaid, are hereunto annexed

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Paul D. Compton, of counsel for the appellant, and by Mr. Edward F. Butler, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be affirmed, with costs as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the Statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

RAYMOND J. CANNON,
Clerk of the Court of Appeals
of the State of New York.

Appendix D

Court of Appeals, Clerk's Office,
Albany, April 21, 1955.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals with the papers originally filed therein, attached thereto.

RAYMOND J. CANNON,
Clerk.

(STATE OF NEW YORK
COURT OF APPEALS

SEAL)

Appendix D

(Order on Remittitur From Court of Appeals)

At a Special Term, Part II of the Supreme Court of the State of New York held in and and for the County of New York at the County Courthouse in said County on the 9th day of May, 1955.

Present:

HON. ARON STEUER, *Justice.*

HELENE M. BEAUMONT,
Plaintiff-Appellant,

against

PENNSYLVANIA RAILROAD COMPANY, FLORIDA EAST COAST RAILWAY COMPANY and FLOYD M. LOFTIN and JOHN W. MARTIN, as Trustees of the Florida East Coast Railway Company,
Defendants-Respondents.

The plaintiff-appellant having appealed to the Court of Appeals from so much of the judgment of the Appellate Division of the Supreme Court, First Department, entered herein in the office of the Clerk of the County of New York, on July 29, 1954, as modified the judgment of the Supreme Court of the State of New York, County of New York, in the above entitled action entered in the office of the Clerk of New York County on December 10, 1953 by reducing the amount of plaintiff's recovery against defendants from $84,634.21 to $400 with interest from May 25, 1945, and from so much of said judgment as affirmed as so modified with costs of $395.17 to defendants the said judgment entered in the office of the Clerk of the County of New York on December 10, 1953, and the appeal having been

duly argued at the Court of Appeals and that Court in an order dated the 21st day of April 1955 having ordered and adjudged that the judgment of the Appellate Division of the Supreme Court so appealed from be affirmed with costs, and having further ordered that the records and proceedings in that Court be remitted to the Supreme Court, there to be proceeded upon according to law.

Now, upon reading and filing the remittitur of the Court of Appeals and on motion of Conboy, Hewitt, O'Brien & Boardman, attorneys for the defendants-respondents, it is

ORDERED that the order and judgment of the Court of Appeals be and the same hereby is made the order and judgment of this Court.

Enter,

A. S.,
J. S. C.

Filed May 9, 1955
New York County Clerk's Office

Appendix D

(Judgment on Remittitur of Court of Appeals)

SUPREME COURT

NEW YORK COUNTY

HELENE M. BEAUMONT,

Plaintiff-Appellant,

against

PENNSYLVANIA RAILROAD COMPANY, FLORIDA EAST COAST RAILWAY COMPANY and FLOYD M. LOFTIN and JOHN W. MARTIN, as Trustees of the Florida East Coast Railway Company,

Defendants-Respondents.

The plaintiff-appellant having appealed to the Court of Appeals from so much of the judgment of the Appellate Division of the Supreme Court, First Department, entered herein in the office of the Clerk of the County of New York on July 29, 1954, as modified the judgment of the Supreme Court of the State of New York, County of New York in the above entitled action entered in the Office of the Clerk of the County of New York on December 10, 1953, by reducing the amount of plaintiff's recovery against defendants from $84,634.21 to $400 with interest from May 25, 1945, and from so much of said judgment as affirmed as so modified with costs of $395.17 to defendants, the said judgment entered in the office of the Clerk of the County of New York on December 10, 1953, and the appeal having been duly argued at the Court of Appeals and that court in an order dated the 21st day of April 1955 having ordered and adjudged that the judgment of the Appellate Division

of the Supreme Court so appealed from be affirmed with costs, and having further ordered that the records and proceedings in that court be remitted to the Supreme Court, there to be proceeded upon according to law; and the remittitur from the said Court of Appeals having been filed herein, and the order having been entered herein making the order and judgment of the said Court of Appeals the order and judgment of this court;

Now, on motion of Conboy, Hewitt, O'Brien & Boardman, attorneys for the defendants-respondents, it is

ADJUDGED that the said Judgment entered herein on July 29, 1954 be and the same hereby is affirmed; and it is hereby

ADJUDGED that the defendants-respondents recover of the plaintiff-appellant the sum of $206.66 costs as taxed, and that the defendants-respondents have execution therefor.

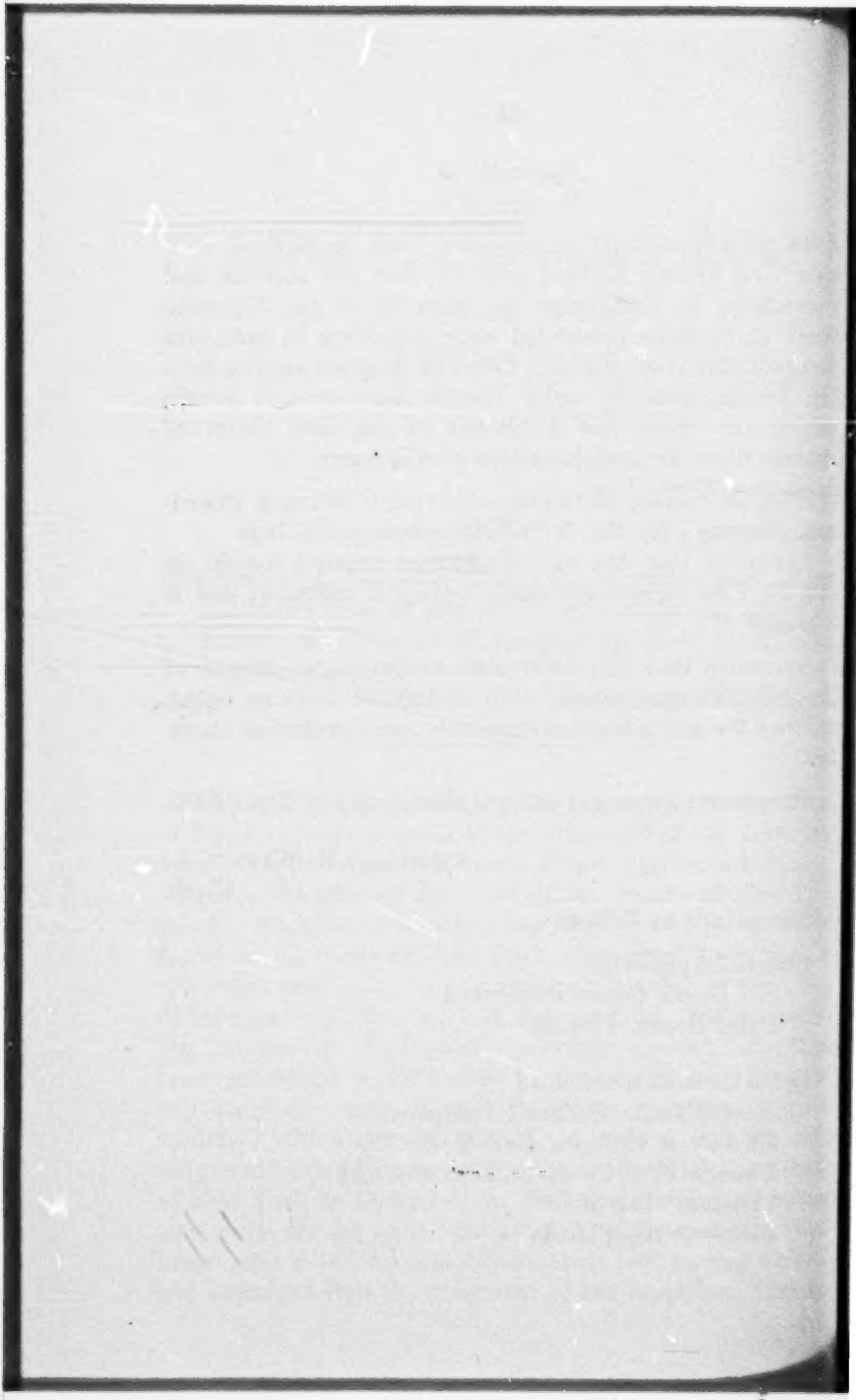
Judgment signed and entered this 10 day of June, 1955.

ARCHIBALD R. WATSON,
Clerk.

Addresses are as follows:

Plaintiff-Appellant:
800 South Ocean Boulevard
Palm Beach, Florida

Defendants-Respondents:
Pennsylvania Railroad Company
33rd St. & 7th Ave., New York City
Florida East Coast Railway Co. and
Trustees thereof—
Jacksonville, Florida



No. 229

Office - Supreme Court, U. S.
FILED
AUG 9 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

HELENE M. BEAUMONT,

Petitioner-Plaintiff,

v.

PENNSYLVANIA RAILROAD COMPANY, FLORIDA EAST COAST RAILWAY COMPANY and FLOYD M. LOFTIN and JOHN W. MARTIN, as Trustees of the Florida East Coast Railway Company,

Respondents-Defendants.

BRIEF FOR RESPONDENTS IN OPPOSITION

EDWARD F. BUTLER
39 Broadway
New York 6, N. Y.
Attorney for Respondents

THE COURT PRESS, 180 Cedar Street, N. Y. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

HELENE M. BEAUMONT,
Petitioner-Plaintiff,

v.

PENNSYLVANIA RAILROAD COMPANY, FLORIDA EAST COAST RAILWAY COMPANY and FLOYD M. LOFTIN and JOHN W. MARTIN, as Trustees of the Florida East Coast Railway Company,
Respondents-Defendants.

BRIEF FOR RESPONDENTS IN OPPOSITION

Petitioner states (Pet. p. 3) that the following questions are presented for review:

Are the provisions of respondents' tariffs which limit their liability for the loss of an interstate passenger's baggage to a value declared by the passenger and which prohibit declarations of value in excess of $2,500, valid and enforcible where such baggage exceeds $2,500 in value, or are such provisions in violation of Title 49, U. S. Code, Section 20(11)?

Are the provisions of respondents' tariffs exempting them from all liability for the loss of an interstate passenger's jewelry transported as baggage where there was no fraud on the part of the passenger, valid and enforcible, or are such provisions in violation of Title 49, U. S. Code, Section 20(11)?

POINT I

Review is not warranted of either question because petitioner was not aggrieved by the decision below with respect to either question.

When the baggage was checked petitioner's agent signed a baggage declaration (Def. Ex. A; R. 43, 49) which stated in large easily readable type that upon payment of the tariff charges for value in excess of the ticket allowance of $100, the baggage could be insured for an amount not to exceed $2,500 per passenger ticket. Since the baggage was checked on four passenger tickets petitioner was therefore put on notice that she could, upon payment of the appropriate excess charges, declare a total valuation of $10,000. Instead, she elected to declare the minimum valuation of $400 thereby avoiding payment of any excess value charges. Therefore, irrespective of the validity of the ceiling on declared values, petitioner was not aggrieved thereby because she voluntarily elected to declare a value amounting to only a small fraction of the ceiling value.

The Appellate Division of the New York Supreme Court decided the case on this independent ground as well as upon the ground of the validity of the ceiling and its decision was affirmed without opinion by the Court of Appeals of the State of New York. On this phase of the case the Appellate Division stated in its opinion (284 App. Div. at p. 360):

> "Not having declared the full $2,500 value on each ticket, plaintiff is not even in a position

to raise the question as to whether defendants' rates had deprived her of obtaining full coverage."

It is submitted that review by this Court at the instance of a person not damaged by the baggage tariff ceiling is particularly unwarranted where, as the Court below said (284 App. Div. at p. 358):

> "It is not denied that for more than forty years carriers have been handling baggage under tariff rules duly filed giving passengers a choice of rates dependent upon value up to a valuation of $2,500 and excluding from baggage service property valued in excess of that amount."

Nor is the petitioner aggrieved by the decision of the Court below with respect to the second question which she proposes for review in this Court, viz: the validity of the tariff provisions prohibiting the inclusion of jewelry in baggage. She was awarded judgment below in the full amount of the valuation which she had declared. If the jewelry was properly included in the baggage, respondents' liability therefor was limited to the value declaration. If not, the respondents manifestly had no additional responsibility beyond the value declaration. In either event petitioner would be entitled to no more than she has already received.

POINT II

The decision below holding valid the provisions of respondents' tariff limiting their liability for the loss of baggage to a value declared by the passenger with a ceiling of $2,500 on such value declarations, is so clearly justified by the Interstate Commerce Act that review by this Court is not warranted.

Section 20(11) of the Interstate Commerce Act (Title 49 U. S. Code) provides that every common carrier shall be liable for property received by it for transportation and that "no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier * * * from the liability hereby imposed". This was originally enacted by the Carmack Amendment of 1906 (34 U. S. Stat. 595). Subsequently, however, baggage was specifically excepted from this prohibition. This exception is contained in the proviso

> "That the provisions hereof respecting liability for full actual loss, damage, or injury notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply,
>
> *first,* to baggage carried on passenger trains or boats, or trains or boats carrying passengers;
>
> *second,* to property * * * concerning which the carrier shall have been or shall be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain *rates dependent upon the value de-*

> *clared in writing* by the shipper or agreed upon in writing as the released value of the property, * * *." (Emphasis added.)

This proviso, first introduced into Section 20(11) by the Second Cummins Amendment in 1916 (39 U. S. Stat. 441), could hardly be more explicit. The first exception in the statute permits agreements limiting liability for baggage without any qualification whatsoever whether based on choice of rates or otherwise. Of course, carriers cannot be arbitrary in exacting agreements of this kind because they are subject to regulation in this respect by the Interstate Commerce Commission under Sections 1(6), 6 and 15. The requirement of "rates dependent upon the value declared" is by the very language of Section 20(11) itself applicable only to "property" covered by the second exception. The fallacy in petitioner's argument on this phase of the case lies in applying to *baggage* the limitation which the statute applies only to *other property.*

The "baggage" covered by Section 20(11) refers to property checked with the carrier for transportation on a passenger ticket. A passenger's luggage not so checked falls within the category of other property. See *New York, New Haven & Hartford R. R. Co.* v. *Nothnagle,* 346 U. S. 128, 134 (1953), in which this Court expressly recognized the difference in statutory treatment between *baggage* and *other property.* In that case the Court had before it the limitation of liability provisions of a redcap service tariff and pointed out that (p. 134) *baggage not being involved,* "the limitation must therefore qualify under the [statutory] proviso as part of an authorized schedule of rates graduated according to property valuations *in writing*".

Petitioner's reference to the *Nothnagle* case (Pet. p. 9) ignores this statutory distinction so clearly recognized by this Court. The footnote in the opinion (346 U. S. at p. 135) stating "we need not now consider * * * whether a carrier's refusal to handle property above a certain value is permissible at all", plainly refers to "property" covered by the second exception in the statutory proviso and not to "baggage" covered by the first exception.

POINT III

Review is not warranted with respect to the question of the validity of the tariff provisions prohibiting the inclusion of jewelry in passenger's baggage.

This question is academic if, as the Court below held, petitioner's declaration of value is binding upon her. Only if that issue were taken for review and the determination of the Court below with respect to it reversed would the question of the validity of the tariff provisions governing jewelry require answer. This question does not therefore independently justify review.

Furthermore, the holding below on this question is plainly in accord with the decision of this Court in *Director General* v. *Viscose,* 254 U. S. 498 (1921). In the *Viscose* case this Court held that a tariff provision excluding a commodity from transportation is "permissible classification of property for transportation" within the meaning of Sections 1(6) and 6 of the Interstate Commerce Act and is therefore valid unless and until the Commission determines it to be

unreasonable. The Interstate Commerce Commission has expressly held that a baggage tariff rule excluding jewelry similar to that here involved is just and reasonable and dismissed complainant's claim for damages for the loss of jewelry which she had included in her baggage in violation of the rule. *Jones* v. *L. I. R. R.*, 74 I. C. C. 238 (1922).

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

EDWARD F. BUTLER
39 Broadway
New York 6, N. Y.
Attorney for Respondents

Dated: August 8, 1955.